IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JODHPUR

JUDGMENT

(1) Smt.Ghisi Bai Vs. Ganpat Lal & ors.

(S.B.CIVIL MISC. APPEAL NO.526/1994)

(2) Mohanlal Vs. Ganpat Lal & ors.

(S.B.CIVIL MISC. APPEAL NO.527/1994)

Against the award dated 14.07.1994 made by the Motor Accidents Claims Tribunal, Udaipur in their Claim Case No.319/1992

Date of Judgment : 30th November 2006

PRESENT

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr.Vikram Singh Choudhary
for Mr.I.R.Choudhary, for the appellants

Mr.D.K.Bhootra)
Mr.Sanjeev Johari)
Mr.B.K.Bhatnagar) for the respondents
Mr.R.S.Mankad)

BY THE COURT:

Both these appeals, CMA Nos.526/1994 and 527/1994, preferred respectively by the mother (Ghisi Bai) and by the father (Mohanlal) of a vehicular accident victim (Radhey Shyam) against the same award dated 14.07.1994 made by

the Motor Accidents Claims Tribunal, Udaipur in their Claim Case No.319/1992 involve common and inter-mixed questions; hence were heard together and are taken up for disposal by this common judgment.

On 26.09.1989 at about 9.00 p.m. on National Highway No.8 towards Udaipur, Radhey Shyam (about 29 years), while driving a three-wheeler bearing registration No.RJP 7009 and accompanied by one Ramesh Chandra met with an accident when the three-wheeler was hit by a matador van bearing registration No.RPJ 6314. Radhey Shyam and Ramesh Chandra sustained several injuries and both of them succumbed. Radhey Shyam expired in hospital on 29.09.1989 while undergoing treatment. Smt.Jasoda, Mohanlal and Ghisi Bai, respectively the wife, father and mother of the deceased Radhey Shyam jointly filed an application for compensation on 23.11.1989 (Claim Case No.319/1992) against the persons related with both the vehicles involved in the accident. Ganpatlal, Lal Mohammed and New India Assurance Company Limited were arrayed as non-applicants Nos.1,2 and 3 respectively being the driver, owner and insurer of the aforesaid matador van; non-applicant No.4 Narain Singh was joined being the present owner of the three-wheeler whereas United India Insurance Company was joined as non-applicant No.5 being insurer of the said three-wheeler.

Another person Takhatmal was joined as non-applicant No.6 being the erstwhile registered owner of the vehicle but proceedings against him were dropped. Proceedings were also dropped against driver of matador van, Ganpatlal non-applicant No.1.

While narrating the incident, the claimants asserted in the claim application that the accident occurred for rash and negligent driving of the aforesaid matador van and for quantification of compensation submitted that deceased Radhey Shyam was about 29 years in age and was earning Rs.1,200/- per month as driver of the three-wheeler. The claimants asserted longevity of life in their family and averred that Rs.12,000/- were spent on the treatment and last rites of Radhey Shyam; and on pecuniary and non-pecuniary losses claimed compensation in the sum of Rs.3,50,000/-.

The non-applicant No.2, owner of the matador van, while denying the claim averments asserted that the said matador van was put on speed-governor limiting its speed to 40-45 km. per hour maximum; and alleged that three-wheeler auto rickshaw could not have been taken beyond the municipal limits of Udaipur. It was also submitted that entire liability remained either with the owner of the auto rickshaw or the insurer of the matador van. Non-applicant No.3 New India Assurance Company Ltd., the insurer of

matador van, again denied the claim averments and alleged contribution of the deceased to the accident and also alleged violation of policy conditions by the vehicle owner. The non-applicant No.5, insurer of the three-wheeler, on the other hand denied the responsibility of the three-wheeler driver towards the accident and also alleged that the vehicle was transferred without information to the insurer and there was no liability in the said insurer and in any case its liability was limited up to Rs.15,000/-. On 31.10.1990 on the basis of the pleadings of the parties, following issues were framed by the Tribunal for determination of the questions involved in the case:-

> "1- आया दिनांक 26-9-89 को श्री राधेश्याम की मृत्यु वि0 नं01 श्री गणपत लाल के द्वारा वाहन संख्या आर0पी0जे0 6314 को गफलत व लापरवाही से चलाने के कारण कारित हुई ?
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> 2- आया प्रार्थीगण क्लेम में बताई गई राशि रूपया 3,50,000/- या अन्य कोई राशि प्रतिकार से विपक्षीगण से पाने का अधिकारी है? यदि हाँ तो कितनी व किस किस से ?
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> 3- आया बीमा कम्पनी के द्वारा जवाब दावे में उठाई गई आपत्तियों के आधार पर बीमा कम्पनी का कोई दायित्व नहीं है ?
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> 4- दादरसी ?"

On 31.10.1990 itself an order was made on the application under Section 140 of the Motor Vehicles Act and the proceedings in relation thereto having a co-relation with

the questions involved in the case shall be referred hereafter. It may be pointed out that in relation to death of other occupant of three-wheeler Ramesh Chandra, another claim application was made by his dependents being Claim Case No.320/1992. The Tribunal proceeded to consolidate the trial of these two claim cases relating to the same accident and in oral evidence were examined Jasoda wife of Radhey Shyam, claimant No.1 herein as AW-1, Madanlal father of Jasoda as AW-2, Kanta wife of Ramesh Chandra, claimant in other claim case, as AW-3, Purshottam, brother of other victim Ramesh Chandra, as AW-4 and Mohanlal father of the victim Radhey Shyam, present claimant No.2, as AW-5. The claimants also produced relevant documentary evidence including police investigation papers, post-mortem report etc. The claimants concluded their evidence on 05.07.1994 and that very day the non-applicants expressed that they would not lead any evidence; accordingly, arguments were heard and the Tribunal proceeded to dispose of both the claim cases by the impugned common award dated 14.07.1994.

With reference to the evidence available on record, the Tribunal decided the relevant issues in both the claim cases in relation to the responsibility towards accident and liability towards compensation in the manner that the accident occurred for rash and negligent driving of the matador van

and that its insurer was fully liable to satisfy the award of compensation. Taking up quantification of compensation in relation to the present claim case No.319/1992, the Tribunal referred to the evidence on record and accepted the age of the deceased between 28 to 30 years and believing the evidence adduced by the claimants accepted the loss of contribution at Rs.800/- per month. On the basis of the decision of the Hon'ble Supreme Court in General Manager, Kerala State Road Transport Corporation, Trivandrum Vs. Mrs.Susamma Thomas and others: AIR 1994 SC 1631, the Tribunal considered it appropriate to apply multiplier of 12 with reference to the fact that the deceased had no issues and age of his father was stated at about 62 years at the time of making of the claim application. Therefore, the Tribunal assessed pecuniary loss at Rs.1,15,200/- (Rs.800/- x 12 x 12) and added further amount of Rs.15,000/- towards loss of consortium and considered it appropriate to award compensation in the sum of Rs.1,30,200/- to the claimants with interest at the rate of 12% per annum from the date of filing of claim application.

The Tribunal also noticed conflicting stands taken on one hand on behalf of the wife of deceased and on the other hand on behalf of his father towards apportionment of award amount, each one claiming the entire amount. The Tribunal

referred to the evidence on record and observed that various aspects of the matter regarding status of the family and contribution of the deceased were left untouched by the parties. Regarding the assertion that wife of the deceased was likely to contract remarriage, it was observed that no questions were asked to her and merely on the basis of assumptions, she could not be deprived of the award amount. It was also observed that the father of the deceased had also not been shown having any other source of income and being in old age he could also not be deprived of compensation. The Tribunal thereafter ordered that out of the amount that shall now be paid by the insurer, Rs.5,000/- shall be paid cash to Jasoda (wife) and Rs.2,000/- to Mohanlal (father) and out of the remaining amount, two-third be kept in fixed deposit for Jasoa and one-third in fixed deposit for Mohanlal.

Relevant it is now to notice that on 31.10.1990 interim compensation on 'No Fault Liability' was allowed by the Tribunal in favour of the claimants against both the insurers aforesaid directing them to make payment of the amount of Rs.12,500/- each with interest at the rate of 12% per annum from the date of filing of claim application. In pursuance of this order, an amount of Rs.14,000/- was deposited by way of the cheque dated 30.11.1990 by United India Insurance

Company Limited (three-wheeler insurer) and out of this amount, Rs.2,000/- were paid cash to the claimant No.1 Jasoda, wife of the deceased and Rs.12,000/- were kept in her fixed deposit. Another cheque in the sum of Rs.14,250/- was deposited by New India Assurance Company Limited (matador insurer) on 14.02.1991 and the Tribunal directed this amount to be distributed equally between claimants Nos.2 and 3 Mohanlal and Ghisi Bai, father and mother of the deceased, putting Rs.7,000/- in fixed deposit for each and remaining in their savings bank account.

Relevant further is to notice that on 28.11.1991 so far non-applicant No.5 United India Insurance Company is concerned, the matter was settled by way of compromise wherein it was agreed by the claimants that said insurer shall make payment of Rs.15,000/- and the remaining claim shall continue against other insurer only. The said insurer, United India Insurance Company Ltd., having entered into compromise deposited Rs.2,500/- for the claimants, after adjusting Rs.12,500/- already paid under the 'No Fault Liability', by their cheque dated 08.01.1992 and the Tribunal ordered its disbursement on 04.02.1992 in the manner that Rs.1,500/- were placed in the savings bank account of Jasoda while Rs.500/- each were placed in the savings bank account of Mohanlal and Ghisi Bai. The Tribunal while

making impugned award dated 14.07.1994 has noticed the fact about settlement between the claimants and United India Insurance Company Ltd. but then, quantification of compensation has not been disturbed on that count. Of course it has been ordered that in the award amount of Rs.1,30,200/- the amount paid under interim relief shall be adjusted.

Smt.Ghisi Bai, mother of the deceased has taken CMA No.526/1994 against the impugned award joining all the non-applicants and so also claimant No.1 Jasoda and claimant No.2 Mohanlal as respondents fundamentally with the submissions that the Tribunal has seriously erred in proceeding as if the appellant was no longer alive with reference to the statement of Jasoda and assuming as if Jasoda had stated about mother of the deceased Radhey Shyam (i.e. the appellant Ghisi Bai) having died at the age of 80 years. According to the appellant, she being Class-I heir is entitled to compensation on account of accidental death of her son; and that it was entirely unjustified to put two-third of the amount of award in the hands of wife of the deceased who was likely to remarry after taking benefit of award of compensation. The appellant has also asserted that the Tribunal has erred in quantification of compensation and the multiplier of 12 remains inadequate. The appellant has prayed

for directions for allowing one-third compensation to her, only one-third compensation to the wife of the deceased and for enhancement of the amount of compensation.

Simultaneously, the husband of said appellant Ghisi Bai, claimant No.2 Mohanlal, has filed separate appeal (CMA No.527/1994) against the same award dated 14.07.1994 and therein again quantification of compensation has been put to question with the contentions that the multiplier applied and the multiplicand adopted by the Tribunal are too low. Allowing of two-third compensation amount to the wife of the deceased has similarly been put to contention with the submissions that she might remarry; and while making a prayer for enhancement of compensation, it has been prayed that widow of the deceased may be allowed only one-third of the compensation.

Mr.V.S.Choudhary, learned counsel for the appellants has strenuously contended that the Tribunal has erroneously deprived the mother of the victim of her share in the amount of compensation altogether; that the Tribunal has erred in not taking into consideration future prospects of deceased who was about 28 years in age and in not taking note of unrebutted evidence on record; that the Tribunal has erred in applying the multiplier of 12 only whereas in the present case there was no reason to have applied a multiplier less than 18;

that the Tribunal has erred in not awarding any compensation towards loss of love and affection for the parents of the deceased; that the Tribunal has erred in not granting any amount towards funeral expenses; and that the Tribunal has erred in not awarding adequate compensation in relation to medical expenditure during the treatment of victim. Learned counsel has placed reliance on Division Bench decisions of this Court in Smt.Kalli @ Kalyani and others Vs. Indra Raj Bairwa and others: 2004 WLC (UC) 789 and in Smt. Chander Kanta and 5 ors. Vs. Ashfak Ahmad and others: 2004 WLC (UC) 791. Learned counsel Mr.D.K.Bhootra appearing for New India Assurance Company has strenuously opposed with the submissions that the amount awarded by the Tribunal remains that of just compensation and there is no scope for enhancement in the present case. Learned counsel referred to a decision of this Court in S.B.Civil Misc. Appeal No.1316/2005: National Insurance Company Limited Vs. Smt.Vinod Choudhary & others, decided on 26.09.2005 and so also of the Hon'ble Supreme Court in Managing Director, TNSTC Ltd. Vs. K.I.Bindu and others: 2006(1) WLC (SC) 280. Learned counsel submitted that consideration of future prospects is not germane to determination of just and reasonable compensation; that multiplier of 12 is in accord with the principles emanating from Susamma Thomas (supra)

particularly when the deceased had no issue. On the other hand, learned counsel Mr.Sanjeev Johari appearing for the United India Insurance Company has submitted that with the positive finding by the Tribunal that the accident occurred for rash and negligent driving of the matador van, the entire liability ought to have been mulcted upon the insurer of the said offending vehicle and, therefore, even the very basis of payment of Rs.15,000/- by the United India Insurance Company is knocked out and the said amount deserves to be reimbursed to them and to that extent the award deserves to be modified with reference to Order 41 Rule 33 CPC.

Submissions of learned counsel for the parties have been given thoughtful and anxious consideration and the entire record has been scanned through.

Broadly speaking two major questions arise for consideration in these appeals: one, as to whether the award in question calls for modification by enhancement of the compensation; and second, as to whether apportionment of the award amount by the Tribunal calls for any interference?

So far quantification of compensation is concerned, having examined the material placed on record, this Court is clearly of opinion that though the award made by the Tribunal is on the lower side but cannot be said to be grossly inadequate or insufficient and does not warrant interference.

The claim for consideration of future prospects does not fit in the fact situation of the present case where deceased has been shown earning as a driver of three-wheeler in private employment. The deceased being not in any settled job, element of advancement in career and thereby increase in earning as considered in the cases of Smt.Kalli and Smt.Chandra Kanta (supra) cannot be applied to the facts of the present case. In Smt.Kalli's case, deceased was a Police Sub-Inspector in 28 years of age having a settled job and having all possibilities of enhancement in future by way of promotion, annual increments etc. Similarly in the case of Smt. Chandra Kanta, deceased though in 40 years of age was stated to be in permanent employment with Rajasthan State Electricity Board as Meter Reader. The cases of settled employment with reasonable chances of future advancement cannot be equated with the case of private job and employment where the element of future prospects is shrouded in thick of uncertainties. In this view of the matter, Single Bench decision referred by the learned counsel for the insurer in Smt.Vinod Choudhary's case (supra) that upon application of multiplier as per Second Schedule, no increase can be made on the consideration of future prospects needs no further dilatation in the facts of this case where the deceased was not in any settled job or employment and for

this reason future prospects are not being considered; and further because multiplier has not been applied as per Second Schedule. However, with respect it may be pointed out that absolute and unqualified proposition of non-consideration of future prospects in every case does also not appear standing in conformity with the ratio of the decision of the Hon'ble Supreme Court in Susamma Thomas (supra) and so also the Division Bench decisions of this Court noticed above. Be that as it may, suffice is to notice for the present case that claim for enhancement in the name of future prospects is not being countenanced because of uncertainty and unsettled source of income of the deceased. The Tribunal has taken income of the deceased as asserted by the claimants in their claim application at Rs.1,200/- per month and for that reason only the Tribunal has taken loss of contribution at Rs.800/- per month, obviously after deducting one-third on personal expenditure of the deceased. There appears no reason to enhance the multiplicand in this case.

Application of multiplier of 12 does not appear wholly unjustified for the circumstances that the parents of the deceased are shown in 52 and 59 years of age respectively and the deceased had no issue. In the overall circumstances of the case and with reference to comparatively smaller number of dependents even personal expenditure of deceased

could have been taken higher than one-third. In any case with reference to the family set up, application of multiplier of 12, though standing wee bit on lower side, does not appear causing grave injustice. The Tribunal has allowed another amount of Rs.15,000/- by naming it 'consortium'. Learned counsel for the claimants has asserted that the Tribunal has erred in not allowing non-pecuniary loss to the parents. However, the fact remains that amount of non-pecuniary loss at Rs.15,000/- cannot be considered only for the wife of the deceased; and in relation to the accident of the year 1989 and the award made in the year 1994, such non-pecuniary loss amount of Rs.15,000/- towards wife and parents of the deceased does not appear falling on much lower side. Moreover, the Tribunal has allowed interest at the rate of 12% per annum from the date of filing of claim application and even if there had been a bit of inadequacy in the award amount, the same is taken care of by the rate of interest allowed to the claimants.

So far the expenditure on treatment of the deceased and funeral expenses are concerned, learned counsel for the claimants has asserted that the statement of Mohanlal AW-5 about spending Rs.20,000/- in treatment and Rs.5,000/- in last rites has not even been put to challenge in cross-examination and there was no reason for the Tribunal not to

have allowed the same. The submissions are not well founded. Mohanlal's statement on the amount spent on treatment does not inspire confidence. No documentary evidence in relation to the treatment expenditure has been placed on record and then, in the claim application it was asserted that Rs.12,000/- were spent in treatment and last rites. Such discrepancy in the claim averments and statement of Mohanlal about the amount spent has not been explained by the claimants. It may also be pointed out that in the peculiar fact situation of the present case, it appears that claimants have received an amount of Rs.2,500/- more than what was intended by the Tribunal. United India Insurance Company had compromised the matter at Rs.15,000/- on 18.11.1991. They had already paid Rs.12,500/- being their share under 'No Fault Liability' by way of cheque dated 30.11.1990 for Rs.14,000/-, that was inclusive of interest on the amount of Rs.12,500/- from 23.11.1989; and after compromise they deposited Rs.2,500/- on 09.01.1992 with the Tribunal after adjusting Rs.12,500/-. The Tribunal while making the award has of course referred to the settlement arrived at by United India Insurance Company but seems to have not looked at the fact that apart from Rs.12,500/- each deposited by the respective insurers under 'No Fault Liability', the said United India Insurance Company deposited another

amount of Rs.2,500/- that was apportioned amongst the claimants as noticed hereinbefore. In this view of the matter, this Court is of opinion that on the whole, the amount that has been received by the claimants of course standing on lower side, cannot be said to be so inadequate or insufficient as to warrant interference in appeal. Prayer for enhancement, therefore, deserves to be rejected.

Apportionment of the award amount in the present case of course gives rise to serious questions and the manner of making of award by the Tribunal allowing two-third of the amount to the wife of the deceased and one-third to the father but not allowing anything to the mother of deceased cannot be appreciated. The Tribunal has proceeded to notice the contentions made against each other by the wife and father of the deceased and then it has been observed that parties were interested in grabbing the entire amount and then want of particulars has been referred and then it has been observed that neither the wife nor the father of the deceased could be deprived of the award amount. It appears that in the tangle of such rival contentions of these two claimants, the Tribunal has simply ignored the mother of the deceased. However, the contention as made in the appeal by mother of the deceased that the Tribunal has assumed her having expired is not correct. The Tribunal has of course wrongly

observed that Jasoda had stated the age of her father-in-law at 90 years living separate and of her mother-in-law having expired at 80 years; and, in fact, such statement was made by Jasoda in relation to her grand father-in-law and grand mother-in-law; however, the Tribunal has thereafter referred to the statement of Jasoda about her father-in-law and mother-in-law living separate and want of specific evidence if her parents-in-law were living with the deceased or not. The observations as made by the Tribunal although appear quite hazy yet indicate that mother of the deceased was not taken as dead but was ignored while making apportionment. The award in question of course suffers from the shortcomings that no provision has been made for the mother of the deceased and comparatively higher proportion of two-third of the compensation amount has been allowed to the wife of the deceased; but the question still remains as to whether for such infirmities the impugned award calls for interference in these appeals?

It is noticed from the record of the present case that the judgment debtor insurer deposited cheque dated 12.09.1994 in the sum of Rs.1,85,602/- for payment under the award. The Tribunal allowed Rs.5,602/- to Jasoda and Rs.2,000/- to Mohanlal; and Rs.1,18,000/- were placed in fixed deposit of Jasoda and Rs.60,000/- in fixed deposit of

Mohanlal. Record further shows that mother of the deceased, appellant of CMA No.526/1994 earlier prayed for a stay; and on her prayer this Court on 24.10.1994 stayed payment of compensation till next date; and the stay order was continued on 24.11.1994. However, an application was made by the said appellant on 26.07.1995 for modification of the stay order with the submissions that she was agreeable if one-third of the compensation be released to the father of the deceased and another one-third to the widow of the deceased as she claims one-third of the award for herself. It was submitted that in view of the stay order issued by this Court, payment of compensation was not being made even to her husband and they were facing lot of hardship. However, on 26.07.1995 itself, a statement was made on behalf of the said appellant before the court that she did not wish to press the stay application in order to avoid legal complications in execution of the impugned award. Accordingly, the ad interim stay order dated 24.10.1994 was vacated, the stay application was rejected as not pressed and the said application for modification stood disposed of. However, the fact remains that even prior to passing of the stay order by this Court on 24.10.1994, the entire amount payable under the award had already been deposited by the insurer on 13.09.1994 and the Tribunal had even issued orders for disbursement on

22.09.1994. There was no question of any execution of the award at all. It is apparent that the statement as made on 26.07.1995 was incomplete inasmuch as by that time the award had already been satisfied. The purpose and reason for adopting such a course by the appellant Ghisi Bai is borne out from an application dated 09.08.1995 made by her husband Mohanlal, appellant of CMA No.527/1994. By way of this application, the said claimant Mohanlal sought directions from the Tribunal for permitting taking of a loan in the sum of Rs.15,000/-on his fixed deposit. Another application was made by Mohanlal on 24.06.1996 for releasing of the amount of Rs.20,000/- from the fixed deposit for the purpose of his house taken from the District Collector in lower income group. Applications were moved by Mohanlal thereafter also for adjustment of the loan from the FDR amount and the Tribunal from time to time issued such directions.

It is obvious that the appellants Ghisi Bai and Mohanlal, parents of the deceased, though have filed separate appeals but have otherwise been proceeding in tandem; and in any case their interests are not conflicting. The stay application moved by Ghisi Bai was not pressed on 26.07.1995 so as to get the stay order vacated specifically for the benefit of Mohanlal who immediately thereafter, on 09.08.1995, prayed for availing loan on his FDR.

Having regard to the record in its totality and conduct of respective parties, this Court is satisfied that though the appeal has been filed by the mother of the deceased on the premise that she could not have been deprived of award amount altogether, but the real purpose and intent has been to question apportionment of two-third of the award amount in favour of the wife of the deceased particularly with reference to the likelihood of her remarriage.

This court is clearly of opinion that merely on the prospects of remarriage the wife of the deceased could not have been deprived of reasonable amount of compensation because of accidental death of her husband. Although apportionment of such larger part as two-third in favour of the wife of the deceased cannot be said to be wholly equitable; yet looking to the quantum of compensation awarded by application of multiplier of 12 only, where the principal amount of award ultimately stands at about Rs. 1.05 lacs after adjustment of interim compensation; and looking to the amount received by each of the three claimants: by way of interim award, then under settlement by one insurer, and then by way of final award; then having regard to the period elapsed where the accident occurred way back in the year 1989 and the award was made in the year 1994; and further looking to the conduct of the appellant Ghisi Bai, in

consciously not pressing her stay application in spite of the fact that interim order was made in her favour; and in the overall circumstances of the case, it does not appear appropriate to disturb the apportionment as made in the impugned award at this length of time. The appeals, therefore, deserve to be dismissed.

An ancillary question posed on behalf of United India Insurance Company may also be addressed to. It has been contended that the Tribunal having found the accident to have occurred for rash and negligent driving of matador van, the entire liability ought to have been mulcted upon the insurer of the said vehicle and the amount of Rs.15,000/- paid by United India Insurance Company may be ordered to be restituted. The submission is meritless. The said insurer United India Insurance Company consciously entered into a settlement with the claimants for payment of Rs.15,000/- before the claim was put to trial and cannot be heard to say after making of the award that they may be allowed benefit of the finding recorded by the Tribunal. Moreover, major component of the said amount of Rs.15,000/- has been the amount of Rs.12,500/- that were nevertheless payable under 'No Fault Liability'. The submissions of the said insurer are, therefore, rejected.

In the aforesaid view of the matter, this Court is of opinion that the award in question calls for no interference. The appeals fail and are, therefore, dismissed. Parties are left to bear their own costs.

(DINESH MAHESHWARI),J.

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